

HOUSE BILL 3358

By Hood

AN ACT to amend Tennessee Code Annotated, Title 50,  
Chapter 7, relative to employment security.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 7, Part 7, is amended by adding the following as a new section thereto:

50-7-7\_\_.

(a) The department of labor and workforce development shall establish an incentive program to provide a cash reward to citizens who notify the employment security division of criminal fraud by recipients of unemployment security benefits. The cash reward shall be paid if the information provided by the citizen results in a criminal conviction. Such cash awards shall be set at a meaningful amount through a schedule to be established by the department of labor.

(b) The unemployment security division shall furnish information to acquaint the public with the existence of the program and the means by which citizens may participate.

(c) The commissioner of labor and workforce development shall use the commissioner's rule-making authority under this chapter to promulgate rules establishing the program mandated by subsection (a).

(d) The department of labor shall file with the commerce, labor and agriculture committee of the senate, and the commerce committee of the house of representatives, by February 15 of each year, an annual report of all monies paid to citizens pursuant to the program established by this section.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 7, Part 2, is amended by adding the following as a new section thereto:

50-7-2\_\_.

"Misconduct" means conduct evincing such willful and wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from its employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertency or ordinary negligence in isolated instances or good faith errors in judgment or discretion are not deemed to be misconduct.

SECTION 3. Tennessee Code Annotated, Section 50-7-303, is amended by deleting subsection (a)(7) in its entirety and by substituting instead the following:

(7)(A) For each week with respect to which the claimant has made any false or fraudulent representation or intentionally withheld material information for the purpose of obtaining benefits contrary to the provisions of this chapter, and an additional thirteen (13) weeks for the first week the representation was made or fact withheld and six (6) weeks for each week thereafter, the additional weeks not to exceed forty-nine (49) weeks, beginning with the week following the week in which such findings were made. In the event an overpayment of benefits results from the application of this disqualifying provision, such overpayment of benefits shall not be chargeable to any employer's account for experience rating purposes;

(B) Each claimant found in violation of this subsection (7) shall repay to the department's employment security division the overpayment and, as a civil penalty, an amount equal to the overpayment. The over payment is the amount of benefits the claimant received by direct reason of fraud. The proceeds of any civil penalty collected pursuant to this subdivision shall be used to defray the costs of enforcing this chapter.

(C) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this subsection (7) remains unpaid.

SECTION 4. Tennessee Code Annotated, Section 50-7-303, is further amended by adding the following language immediately following the existing language of subsection (a)(2):

A discharge for dishonesty constituting a crime or any felony or Class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction, shall be deemed to be a discharge for misconduct connected with such claimant's work. There shall be a rebuttable presumption that when a claimant has properly performed the duties of claimant's employment, and then ceases to properly perform such duties, the claimant has engaged in misconduct.

SECTION 5. Tennessee Code Annotated, Section 50-7-709, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for the person's own benefit or for the benefit of any other person, is guilty of unemployment insurance fraud. A violation of this subsection shall be punished as theft and graded in accordance with 39-14-105. The determination

of the degree of an offense under this subsection shall be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

SECTION 6. Tennessee Code Annotated, Section 50-7-711, is amended by deleting the language "commits a Class E felony." at the end of subsection (a) and by substituting instead the following:

is guilty of unemployment insurance fraud. A violation of this subsection shall be punished as theft and graded in accordance with 39-14-105. The determination of the degree of an offense under this subsection shall be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

SECTION 7. Tennessee Code Annotated, Title 50, Chapter 7, Part 3, is amended by adding the following as a new section thereto:

50-7-3\_\_.

(a) If an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that becomes excessive, and the employer has complied with requirements of subsection (d) of this section with respect to that employee, the employee is ineligible to receive benefits until six (6) weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least six (6) times the employee's weekly benefit rate under 50-7-301 in employment or other work covered by the unemployment insurance law of any state or the federal government. For the purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred.

(b) For purposes of this section, tardiness becomes excessive if an employee is late for six (6) or more scheduled workdays in the twelve (12) month period preceding the date of the discharge without providing adequate notice to his or her employer.

(c) For purposes of this section, absenteeism becomes excessive if an employee is absent for two (2) or more scheduled workdays in the twelve (12) months period preceding the date of the discharge without providing adequate notice to his or her employer.

(d)

(1) The requalifying requirements under subsection (a) of this section apply only if the employer has a written policy on notification of tardiness or absences that:

(A) Defines what constitutes a single occurrence of tardiness or absenteeism;

(B) Defines what constitutes an excused absence;

(C) Describes the process for providing adequate notice of tardiness or absence; and

(D) Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.

(2) The employer shall provide a copy of the written policy to each employee and shall have written evidence that the employee received a copy of that policy.

(3) The employer must have given the employee at least one (1) warning concerning the employee's violation of the employer's written policy within the twelve (12) month period preceding the date of the discharge.

(4) The employer must apply the written policy uniformly to all of the employees of the employer.

SECTION 8. Tennessee Code Annotated, Section 50-7-304, is amended by adding the following language at the end of subsection (a):

Each employer shall have fifteen (15) days to respond to any initial notice of a claim for benefits issued by the department.

SECTION 9. Tennessee Code Annotated, Section 50-7-304, is further amended by adding the following language immediately after the first sentence in subsection (f):

At any stage of a disputed claim, the moving party shall bear the burden of proof.

SECTION 10. Tennessee Code Annotated, Section 50-7-304, is further amended by adding the following language to the end of subsection (f):

In the event that either party to an appellate hearing does not appear, whether in person or by telephone as determined by the appeals tribunal and the board of review, a decision shall be entered in favor of the party that does appear. The appeals tribunal and the board of review are authorized to excuse a party's absence from an appellate hearing for good cause.

SECTION 11. Tennessee Code Annotated, Section 50-7-304, is further amended by adding the following language as a new subsection:

(l) The department shall by rule establish an electronic system whereby employers may elect to be notified of claims for benefits by electronic mail and file responses to claims for benefits through the department's internet website.

SECTION 12. Tennessee Code Annotated, Section 50-7-102, is amended by adding the following language at the end of the fourth sentence of subsection (a) immediately before the period ".":

while discouraging employees from committing fraud.

SECTION 13. Tennessee Code Annotated, Section 50-7-304, is amended by deleting subdivision (i)(2)(D) in its entirety and by substituting instead the following:

(D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. There shall be a rebuttable presumption that a hearing officer made his or her decision in an arbitrary or capricious manner if the hearing officer made or disallowed objections in an inequitable manner; or

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.